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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,136	07/24/2003	Kerry L. Hawkins	HAWK 8693US	9353
1688	7590	03/23/2005	EXAMINER	
POLSTER, LIEDER, WOODRUFF & LUCCHESI 12412 POWERSCOURT DRIVE SUITE 200 ST. LOUIS, MO 63131-3615			MULLER, BRYAN R	
		ART UNIT	PAPER NUMBER	
		3723		
DATE MAILED: 03/23/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No.	Applicant(s)	
	10/626,136	HAWKINS, KERRY L.	
	Examiner	Art Unit	
	Bryan R Muller	3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 10 January 2005.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-22 is/are pending in the application.
 4a) Of the above claim(s) 8-14 and 17 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-7, 15, 16 and 18-22 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 10 January 2005 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 3 recites the limitation "said flat surface" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, 6, 7, 15, 16, 18, 19 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Nagy (6,311,580).
5. In reference to claim 1, Nagy discloses a can opener (10) capable of being used on a pull top-type can, the opener comprising a body (30) comprising a forward surface, a rear surface, and a bottom surface, at least said bottom surface being curved to define a generally U-shaped heel (32 and 36), a tab engaging lip (46) having a surface extending rearwardly from an upper, forward end of said heel, said lip having a length less than the diameter of a ring of a pull-top can opening tab (as shown, the length of the lip of the Nagy invention may be less than the diameter of a pull-top type can opening tab depending on the scale of the invention and the size of the can), a starting

Art Unit: 3723

notch (above 36) at a rear end of said tab engaging lip surface and a finishing notch (44) at said front surface, said starting notch having a bottom surface below said lip surface (the base point of the notch, just above 36, is lower than the lip surface 46), said starting and finishing notches are capable of receive a ring of an opening tab of a can to be opened and having a forward surface (40) against which said tab ring can engage said finishing notch being spaced above said starting notch.

6. In reference to claim 2, the Nagy opener includes a handle (34) and the body is formed at one end of the handle.

7. In reference to claim 3, the heel (32 and 36) of the Nagy opener has a first portion (near 32) defining a first radius extending from a flat surface (where handle meets body) and a second portion (near 36) defining a second radius, said second radius continuing from said first radius: said first radius being greater than said second radius.

8. In reference to claim 4, the Nagy opener has a port (50) opening into the starting notch from said front surface, the surface defining a lower surface of said port.

9. In reference to claim 6, the Nagy opener further defines a second port (39) that is spaced above the first port and opens into the finishing notch.

10. In reference to claim 7, the body of the Nagy opener includes a retaining portion which extends over said opening, said retaining portion is capable of maintaining a can lid on the opener upon removal of the can lid from it's can.

11. In reference to claim 15, the Nagy invention, as discussed supra in reference to claim 1, further defines a retainer (38) proximate said finishing notch, said retainer being

is capable of maintaining a can lid on said opener upon removal of the can lid from its can. Further, Nagy is capable of being used in the same manner as the intended use of the claimed invention because the curvature of the generally U-shaped heel may be sized (depending on scale of Nagy opener) such that when a can opening tab is received in the starting notch, pivoting of the can opener about the heel will pivot the tab sufficiently to cause the tab to break the seal of the can lid and the rounded heel is sized such that when the opening tab is received in the finishing notch, pivoting of the can opener about the heel will remove the lid from the can.

12. In reference to claim 16, the Nagy opener includes a first port in communication with said starting notch and a second port in communication with said finishing notch, said first port extending from a forward surface of said body to said starting notch, said second port extending from one of said forward surface or an upper surface of said body, as discussed supra.

13. In reference to claim 18, the retainer of Nagy is defined by a lip, said lip defining the upper part of a channel extending from said forward edge of said opener body to said finishing notch.

14. In reference to claim 19, the retainer of the Nagy opener comprises a pathway that extends from the finishing notch toward the front surface of the body and defines a port in the body that is above the finishing notch,

15. In reference to claim 22, the bottom of the U-shaped heel of Nagy is inherently capable of forming a fulcrum about which the body rotates on top of the lid to raise the a

can opening tab when the tab is engaged in the starting notch and to pry the can lid off the can when the tab is engaged in the finishing notch.

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nagy in view of Kelly (5,309,794).

18. Nagy discloses the opener, as described supra, but does not disclose that the first port has a flat lower surface, said port lower surface intersecting with said body front surface to define an acute angle. Kelly provides a can opener (10) with a starting notch (14), a finishing notch and port (21) opening into said notches. The port defines two flat surfaces, wherein both surfaces create an acute angle (column 3, lines 11 and 12) at their point of intersection with the front surface (17) of the body (19). Kelly also teaches that the "flattened tip (15a) of prong (15) can be easily slid beneath a ring tab" (column 3, lines 66 and 67). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the rounded "tips" at the front surface of Nagy's invention with flattened tips that form acute angles, in view of Kelly, to make it easier to engage a ring tab with the can opener of Nagy.

19. Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagy in view of Coker (4,362,071).

20. In reference to claim 20, the retainer of the Nagy opener comprises a pathway that defines a port in the body as discussed supra, but fails to disclose that the pathway is generally J-shaped. Coker discloses an opener for pull-top type cans with a channel (22) that opens into a notch that has a mouth portion (24) and teaches that the shape of the mouth portion allows the can-opening tab to rotate during opening to prevent the tap from being ripped away from the lid and the mouth portion retains the tab within the mouth after the can is opened (col. 2, lines 29-37). Therefore it would have been obvious to provide the both notches of the Nagy opener with mouth portions similar to those disclosed by Coker in order to prevent the can-opening tab from being accidentally ripped from the lid during opening and to maintain the lid within the mouth after opening. The addition of the mouth to the notches of Nagy would create a J-shaped pathway.

21. In reference to claim 21, the J-shaped pathway created by the obvious addition of a mouth to each notch of the Nagy opener would create a pathway that is generally shaped like an inverted J.

Response to Arguments

22. Applicant's arguments filed on 1/10/2005 and discussed during the phone interview held on 12/22/2004 have been fully considered but they are not persuasive. The Nagy invention both reads on the claims discussed in applicant's arguments and

discussed *supra* (as originally claimed and as amended), and are inherently capable of being used in the same manner as the applicant's claimed invention. The curvature of the heel of the Nagy opener along with the orientation of the starting and finishing notches would allow the Nagy opener to operate to remove a pull-top type can lid in the same manner as the applicant's claimed invention would. Further, the retainer would be inherently capable of retaining the tab of a pull-top type can lid between lips 38 and 40 after the lid is removed.

Conclusion

23. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryan R Muller whose telephone number is (571) 272-4489. The examiner can normally be reached on M-Th and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J Hail III can be reached on (571) 272-4485. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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BRM
3/17/2005